

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
207,517

First named inventor: Arjen Amelink

Application No.: 10/573,337

Art Unit: 2863

Filed: February 21, 2007

Examiner: Bhat, Aditya S.

Title: Method and Device For Backscatter Spectroscopy

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

1. Petition Fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.

☒ Other than small entity-fee \$ 1,620.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of _____ (identify type of reply):

☐ has been filed previously on _____.

☒ is enclosed herewith. 11/19/2009 CCHAU1 00000031 10573337

B. The issue fee and publication fee (if applicable) of \$1453 1620.00 OP

☐ has been paid previously on _____.

☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Robert B. Smith

Signature

Robert B. Smith

Type or Printed name

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New York, NY 10017

Address

November 16, 2009

Date

28,538

Registration Number, If applicable

212 885-9237

Telephone Number

Enclosures:



Fee Payment



Reply



Terminal Disclaimer Form



Additional sheets containing statements establishing unintentional delay



Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:



Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.



Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

November 16, 2009

Date

Robert B. Smith

Signature

Robert B. Smith

Typed or printed name of person signing certificate

Additional Sheet: Petition To Revive Unintentionally Abandoned Application No. 10/573,337

The present application became abandoned on December 24, 2008, for failure to respond to an Office Action mailed on September 24, 2008. Thus, the application has been abandoned for a period of less than one (1) year.

On March 31, 2009, the Office mailed a Notice of Abandonment. Accordingly, the present Petition to revive an unintentionally abandoned application is being filed more than three months after the Notice of Abandonment.

M.P.E.P. 711.03(c) provides that, in the case of a Petition to revive an unintentionally abandoned application which is filed more than three months after the Notice of Abandonment, but less than one year after the abandonment occurred, the applicant must provide a showing as to how the delay between the date the applicant was first notified that the application was abandoned and the date of the filing of the Petition was "unintentional."

The attorney who previously handled this case left the firm in August 2009. When he left the firm, I undertook a review of the files of the pending patent applications that he had been handling. On or about August 13, 2009, I reached this case, and discovered the September 24, 2008 Office Action. The file, however, did not contain a copy of any Notice of Abandonment. On August 13, 2009, I checked the status of the application on PTO PAIR and found that a Notice of Abandonment had been mailed on March 31, 2009.

I, with help from my colleagues, have reviewed a substantial amount of unfiled correspondence found in the former associate's office. Such review is nearing completion, and no copy of the Notice of Abandonment has been found.

It appears from the file that, on September 30, 2008, the former associate mailed a copy of the September 24, 2008 Office Action to our Dutch associate. There was no subsequent correspondence in the file.

On August 18, 2009, I advised our Dutch associate by e-mail that the above case is currently abandoned. On August 24, I received a telephone call and an e-mail from our Dutch associate advising us that, prior to receiving my August 18, 2009 e-mail, they had received no communication from our firm since June 16, 2008, and did not have a copy of the Office Action in question. Our Dutch associate requested that we take steps to revive the application.

I thereafter sent a copy of the September 24, 2008 Office Action to our Dutch associate, noting that, in order to file a Petition to Revive, we would also need to submit a response to the Office Action. I thus requested that he provide instructions for preparing the response.

The September 24, 2008 Office Action included an election of species made orally by the former associate. After forwarding the Office Action to Dutch counsel, I learned that the election of species had not been authorized by the client, and that the client wished to pursue a species other than the elected species. I subsequently conducted research and spoke with a senior PTO Examiner to determine whether the election could be changed. I reported on September 25, 2009 to our Dutch associate that it would probably not be possible to change the election.

On October 2, 2009, I received instructions to proceed with preparing a response to the Office Action and petition to revive. I thereafter prepared the Amendment submitted herewith on as expedited a basis as my docket would allow.

The attorney who previously handled the case never received instructions from the applicant or the applicant's Dutch counsel to abandon the case. The abandonment occurred because our Dutch associate did not receive a copy of the September 24, 2008 Office Action and did not know it existed until receiving my August 18, 2009 e-mail. The delay between the mailing of the Notice Of Abandonment and August 13, 2009, when I first learned of the abandonment, was due to the fact that either we did not receive the Notice, or such Notice was misplaced by the former associate. The delay between August 13, 2009, and the present was due to the need of Dutch patent counsel to review the Office Action, obtain instructions from their client, prepare instructions for our office, deal with the issue of the wrong claims being elected, and for us to prepare an Amendment based on those instructions. No period of the delay was intentional.

Because the applicant never intended to abandon the application, the applicant respectfully submits that the abandonment was "unintentional."